

Government of the District of Columbia
ZONING COMMISSION



ZONING COMMISSION ORDER NO. 920
Zoning Commission Case No. 99-6M/88-16C
(Modification to the Planned Unit Development
at 901 New York Avenue, N.W.)
April 10, 2000

Pursuant to notice, the Zoning Commission for the District of Columbia scheduled a public hearing on January 31, 2000, to consider an application from NDH 901 New York LLC for a modification to an existing planned unit development (PUD) and a related Zoning Map amendment from C-3-C, HR/C-3-C and DD/C-3-C to C-4, pursuant to Chapters 1 and 24 of the D.C. Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations. The public hearing was conducted in accordance with the provisions of 11 DCMR 3022.

FINDINGS OF FACT

1. By letter dated January 6, 2000, the Downtown Housing Now Committee (DHNC) requested party status in Case No. 99-6M/88-16C. At the public hearing, the applicant opposed the DHNC's request for party status on the grounds that the DHNC did not demonstrate that its interests would be significantly, distinctively or uniquely affected by the proposed zoning action more than those of the general public, as is required for party status under 11 DCMR 3022.3. The applicant argued that the Commission's rule that provides hearing notice to all properties within 200 feet of the subject site should serve as guidance to the Commission as to the proximity of properties to be considered uniquely affected by a proposed project. In the instant case, the DHNC building closest to Lots 32 and 33 of Square 372 is located approximately 1,500 feet away, or approximately 7 ½ times the distance requirement for public notice. For this reason, the DHNC properties are not uniquely affected by the proposed project. The Commission agreed with the reasoning advanced by the applicant and unanimously voted to deny party status to the DHNC.
2. On September 16, 1999, NDH 901 New York LLC (the applicant) filed an application for a modification to a PUD previously approved by the Zoning Commission in Order No. 629, Case No. 88-16C, as modified and extended by Z.C. Order Nos. 629-A, 629-B, 629-C, 629-D, 629-E and 629-F (hereinafter the

original PUD) for the property located at 901 New York Avenue, N.W., Lots 32 and 33 in Square 372. The applicant simultaneously filed an application for a related Zoning Map amendment to change the zoning of the subject property to C-4.

3. The original PUD included only Lot 33 of Square 372 and permitted the construction of a mixed-use commercial building containing office and retail uses to a height of 130 feet with setbacks, a floor area ratio (FAR) of 9.5, and a lot occupancy of 86 percent. The project was to provide parking for 288 automobiles. (Z.C. Order No. 629.)
4. The original PUD included an amenities package consisting of:
 - a. Funding for the purchase of the building at 919 L Street, N.W. for the L Street Tenants Association;
 - b. The renovation of 149 city-controlled housing units for low and moderate income families;
 - c. 30,000 square feet of floor space within the building devoted to Convention Center support, retail and service space;
 - d. Improvement of the public space surrounding the subject property;
 - e. An agreement with the National Park Service to address improvements and maintenance of U.S. Reservations 70 and 175;
 - f. Improvement and maintenance of the median of New York Avenue in front of the project; and
 - g. Provision of a day care center in the building, with subsidized rent. (Z.C. Order No. 629.)
5. Since the original PUD was approved in 1988, Lot 33 has had several owners. In May of 1999, the applicant purchased Lot 33.
6. The original PUD has been extended by the Commission such that the applicant may now apply for a building permit on or before October 13, 2001, and may start construction by October 13, 2002. By complying with these deadlines, the applicant has the absolute right to construct the office building approved by the original PUD. (Z.C. Order 629-E.)
7. In response to encouragement from the Office of Planning (OP), as well as land planning and site development considerations, the applicant purchased Lot 32,

consisting of approximately 2,006 square feet on the K Street side of Square 372. Thus, the applicant now owns all of Square 372.

8. The subject property is currently vacant and is situated in Ward 2, within the New York Avenue corridor. It is bounded by K Street on the north, 10th Street on the west, New York Avenue on the south, and U.S. Reservation 175 on the east.
9. The squares directly surrounding the subject property contain a mix of uses. On the west side of 10th Street is Square 343. That portion of Square 343 east of the public alley is currently a parking lot and is controlled by a PUD for either a 9.3 FAR office building or, in the alternative, a 10.5 FAR hotel. The southwest corner of the square, at the intersection of 11th Street and New York Avenue, is an automobile rental business. To the south of the subject property, across New York Avenue, is Square 373, which is occupied by the existing Washington Convention Center. Diagonally southeast, across the intersection of 9th Street and New York Avenue, is the Renaissance Washington Hotel and the Techworld office building complex in Square 403. U.S. Reservation 175 lies directly to the east of Square 372. Farther east across 9th Street is Mount Vernon Square and the Carnegie Library. To the northeast of the subject property, diagonally across the intersection of 9th and K streets, is Square 402, one of several squares under construction with the new Convention Center. Across K Street to the north is Square 371, developed primarily with the Mount Vernon Place United Methodist Church, an affiliated building and parking lots. The remainder of Square 371 is developed with the Henley Park Hotel.

Diagonally to the northwest of the site, across the intersection of 10th and K streets, is Square 342. The southwest corner of Square 342 is developed with several small, boarded-up commercial buildings and an eight-story building used as a youth hostel. The northwest corner of the square is developed with a six-story office building which houses the American Road and Transportation Builders Association at 1010 Massachusetts Avenue. The northeast corner of the square, with an address of 1000 Massachusetts Avenue, is developed with a seven-story office building which houses the Cato Institute. The four-story National Medical Association office building is located at 1012 10th Street. The eight-story Carpenter's Union office building is located on the southeast corner of the square. There is a souvenir shop on the ground floor of this building.

10. The underlying zoning of the subject property is C-3-C, HR/C-3-C and DD/C-3-C. That portion of the property facing Mount Vernon Square is zoned C-3-C. The C-3-C District is designed to accommodate important sub-centers supplementary to the retail and office centers of the downtown core. It is intended to permit medium-high density development, including office, retail, housing, and mixed-use development. The C-3-C District permits matter-of-right development

to a height of 90 feet (with no limit on the number of stories), a maximum permitted FAR of 6.5, and a maximum lot occupancy of 100 percent.

11. The underlying zoning of the vast majority of Lot 33 is HR/C-3-C. The HR/C-3-C District permits both office and hotel uses as a matter-of-right. The HR District was established to encourage the development of an adequate number of hotels within a convenient distance of the existing D.C. Convention Center. The HR District is applied in combination with the underlying zoning of the area, not instead of the underlying zoning of the area. In the HR Incentive District, a hotel or apartment house may be built to a height in excess of that permitted in the underlying zone, but not to exceed 130 feet. The HR District allows a maximum FAR of 8.5 for apartment house or hotel use.
12. Lot 32 in Square 372 (not part of the original PUD) was rezoned from HR/C-3-C to DD/C-3-C in 1991. The DD District is intended to accomplish the land use and development policies of the Comprehensive Plan, including the creation of a balanced mixture of uses downtown, in part through the monitoring and regulation of office development. Within the DD/C-3-C District, the maximum height permitted is 130 feet, the maximum matter-of-right FAR permitted is 9.5, at least 3.5 of which shall be devoted to residential use as permitted in Chapter 17 of 11 DCMR, and a maximum FAR of 10.0 is permitted if transferable development rights (TDRs) are acquired. The maximum lot occupancy permitted is 100 percent. Lot 32 is located in DD Housing Priority Area B, known as the Mount Vernon Square South area.
13. Under the PUD regulations, the Zoning Commission has the authority to impose development conditions, guidelines and standards which may exceed or may be less than the matter-of-right standards identified above. The Zoning Commission may also approve uses that are permitted as special exceptions by the Board of Zoning Adjustment (BZA) or may approve development variances that are required by a project design.
14. The applicant has researched the feasibility of both an office building and a convention hotel on the subject property. The applicant has determined that a convention hotel would only be possible with tax increment financing. After inquiry to the District government, it is apparent that tax increment financing is not available for this project. The applicant has determined that an office building is a very feasible use of the property and has proceeded with plans to develop such.
15. The applicant proposes to build an office building consisting of 10.0 FAR and approximately 532,505 square feet of gross floor area. The building will be 130 feet in height with setbacks, and will have 11 floors. Underground parking for a minimum of 404 cars will be provided.

16. The applicant has worked closely with OP, the Blagden Alley Association, the Logan Circle Community Association, and Advisory Neighborhood Commission (ANC) 2F in regard to the different aspects of the project. As a result of the continuing discussions, the applicant has agreed to invest \$1.5 million in market rate housing within the boundaries of ANC 2F and to meet the housing requirement of Lot 32 in accordance with the Downtown Development District regulations.
17. As a further result of discussions with OP and community groups, the applicant has included certain design features aimed at improving the quality of the ground floor retail including: a 13'4" slab to slab height; kitchen exhaust shafts for food service in some spaces; functional loading and servicing; canopies or signbands with back-lighted tenant signage; flexible storefront systems to allow for multiple entry locations; prominent entries at the two focal corner locations; and a storefront pulled out to the property line along New York Avenue to engage pedestrians.
18. The applicant has worked with the National Park Service (NPS) in an effort to reach a final design for adjacent and nearby U.S. Reservations 175 and 70. Furthermore, the applicant has agreed to increase this amenity by undertaking both the design and construction of Reservation 7019. The project architect, Douglas Carter, recognized as an expert in architecture by the Zoning Commission, testified as to the differences between the design of the original PUD and the currently proposed office building, including: the inclusion of Lot 32 and a corresponding increase in building FAR from 9.5 to 10.0; reduction in the number of stories from 12 to 11; relocation of loading docks from K Street to 10th Street; an increase in parking from 288 spaces to a minimum of 404 spaces; and various interior and exterior design improvements.
20. Mr. Carter explained that many of these design changes were made in order to make the office building compatible with the high technology needs of today's companies.
21. Mr. Carter also described how the proposed design of the office building's exterior places it within the context of Mount Vernon Square as well as New York Avenue.
22. James Prost, the applicant's economic consultant, was accepted as an expert by the Commission. Through written and verbal testimony, Mr. Prost stated that during the construction period the project will generate a total of approximately 473 construction jobs. Mr. Prost stated that during construction, the project would generate \$801,000 in tax revenues and that the construction payroll would reach approximately \$18.2 million. Mr. Prost further indicated that permanent

on-site employment would reach approximately 4,426 jobs, with an annual payroll of approximately \$168.4 million. Mr. Prost testified that the District's permanent annual tax revenue from the project's economic benefits would add up to a capitalized value of approximately \$55.4 million.

23. In testimony at the public hearing and in a traffic analysis submitted with a statement, Martin Wells, the applicant's traffic engineer, accepted by the Commission as an expert, stated that the project would not have an adverse transportation impact on the surrounding neighborhood.
24. Steven E. Sher, the applicant's land planning expert, submitted written testimony and testified at the hearing that the proposed modification and related map amendment are not inconsistent with the Comprehensive Plan, that they are consistent with and meet the standards and objectives of the PUD and map amendment processes, and that they are compatible with the planned character of the area and should be approved.
25. Mr. Sher testified specifically that, pursuant to the Comprehensive Plan Amendments Act of 1998, the Generalized Land Use Map designation in the Comprehensive Plan for the subject property was changed from mixed-use high density residential/high density commercial to high density commercial, making the requested Zoning Map amendment to C-4 not inconsistent with the Comprehensive Plan.
26. The District of Columbia Office of Planning (OP), by memorandum dated January 19, 2000, and by testimony at the hearing, indicated that it had worked closely with the applicant. OP concluded that the proposed PUD modification and related map amendment are not inconsistent with the Comprehensive Plan and recommended that the Zoning Commission approve the modified project with the following conditions:
 - a. Require that leasable space on the first floor be retail space because of the project's critical location between the new Convention Center and downtown;
 - b. Restrict exterior lighting, other than first floor lighting for retail signage, to a low-level wash that would be less intense than lighting proposed for the Carnegie Library or the new Convention Center.
 - c. Request that the applicant continue working with the National Park Service to improve the park design for U.S. Reservation 175 to provide a better relationship between the planned retail space and pedestrian linkages; and

- d. Allow the applicant to meet the housing requirements for Lot 32 through, at its discretion, either a slight modification of the combined lot provisions of 11 DCMR 1706.5 and 1708, or through the on-site/off-site/affordable housing trust fund provisions of 11 DCMR 1706.5 (c) and (e) and Section 1706.24.
- 27. Advisory Neighborhood Commission (ANC) 2F voted unanimously in support of the PUD modification. Chairperson Leslie Miles testified for the ANC as a party. She testified that the PUD modification and Zoning Map amendment were discussed extensively by the ANC and that there was no opposition expressed. Ms. Miles further testified that the ANC fully supports the investment of \$1.5 million by the applicant for market-rate housing within ANC 2F.
- 28. In response to requests by the Zoning Commission, the applicant timely submitted post-hearing materials consisting of:
 - a. A revised landscape plan;
 - b. A detailed elevation/section showing the type and placement of building materials;
 - c. Drawings showing the potential retail awning/canopy variety;
 - d. A drawing showing the newly designed loading dock doors;
 - e. A First Source Employment Agreement, signed by the applicant, creating a hiring obligation that would not exist absent the PUD;
 - f. Letters from and to the National Park Service concerning the applicant's agreement to construct and maintain in perpetuity U.S. Reservations 70 and 175;
 - g. A draft set of conditions to be applicable to the planned unit development and to be incorporated into the applicant's proposed findings of fact and conclusions of law addressing issues raised at the public hearing; and
 - h. A copy of the applicant's agreement with the community in regard to the \$1.5 million investment for housing.
- 29. In order for the Commission to approve the PUD project, the applicant must meet its burden of demonstrating the public benefits and other meritorious aspects of the proposal. The Commission finds that the applicant has met its burden of proof.

30. The proposed action of the Zoning Commission to approve the application with conditions was referred to the National Capital Planning Commission (NCPC) under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. The NCPC, by report dated March 29, 2000 found that proposal would not affect the federal interest nor be inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital.

CONCLUSIONS OF LAW

1. The PUD process is an appropriate means of controlling development of the site in a manner consistent with the best interests of the District of Columbia.
2. The development of this PUD project carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well-planned developments which will offer a variety of building types with more attractive and efficient overall planning and design not achievable under matter-of-right development.
3. Approval of this application as a modification to the original PUD is provided for under the regulations and is appropriate within this regulatory scheme for carrying PUDs to final completion.
4. Approval of this PUD is not inconsistent with the Comprehensive Plan, including the designation of the site for high density commercial use.
5. The proposed PUD meets the minimum area requirements of Subsection 2401.1 of the Zoning Regulations.
6. Approval of this PUD application is appropriate because the application is generally consistent with the present character of the area.
7. The Commission takes note of the position of Advisory Neighborhood Commission 2F, and in its decision has accorded to the ANC the "great weight" consideration to which it is entitled.
8. The approval of the application will promote the orderly development of the site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
9. The proposed modification can be approved with conditions which will ensure that development will not have an adverse effect on the surrounding area.

10. The application is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this order, the Zoning Commission for the District of Columbia orders **APPROVAL** of this application for modification to the original PUD approved by Zoning Commission Order Nos. 629 and 629-A through 629-F, and a related map amendment from C-3-C, HR/C-3-C and DD/C-3-C to C-4 for property located in Square 372, Lots 32 and 33, subject to the following guidelines, conditions and standards:

1. The PUD site shall be developed in accordance with the plans prepared by Davis Carter Scott, marked as Exhibits 20 and 44 and as modified by the guidelines, conditions and standards of this order.
2. The modified PUD shall be an office building with all the leasable space on the ground floor devoted to retail. The building will have a maximum FAR of 10.00 or 532,505 square feet of gross floor area. The height of the building shall not exceed 130 feet. It shall have a maximum lot occupancy of 92 percent. Underground parking shall be provided for a minimum of 404 cars through a combination of self-park, tandem and vault spaces, if vault spaces can be obtained from the District of Columbia.
3. The uses on the ground floor of the building shall consist of one or more of those uses listed in 11 DCMR Sections 1710 and 1711, subject to the limitations set forth in 11 DCMR Subsection 1702.1.
4. The applicant shall invest \$1.5 million in market rate housing within the boundaries of ANC 2F pursuant to the terms of the agreement submitted as Exhibit 44.
5. The applicant shall meet the housing requirement of Lot 32 in accordance with the Downtown Development District regulations, provided that, if the combined lot development option is selected by the applicant, housing shall be constructed in Housing Priority Area B or Housing Priority Area C.
6. Landscaping shall be as provided in the plans submitted with the applicant's submission of February 18, 2000, marked as Exhibit 44.

7. The applicant shall develop and maintain U.S. Reservations 70 and 175 pursuant to the written agreement between the applicant and the National Park Service dated April 7, 2000 and the plans submitted therewith.
8. With regard to retail tenant signage and awnings, the applicant shall be permitted to install a variety of retail tenant signage and awnings via one or a combination of the following methods: (i) colored signage and awnings with applied tenant lettering located on the sign panel and backlighting, or (ii) metal signband with tenant lettering inset into signband and backlighting, as shown in Exhibit 44. Awnings may be installed at the ground level of the building. Covering materials may be canvas or similar non-rubberized cloth material, glass, or metal. Vinyl, or other plastic-like sheeting is not acceptable. Awning surfaces may not be of any color or pattern. Awning edges shall be straight lines; scallops, curves, fringes, etc. are not acceptable. Signage and logos may be placed horizontally in the sign box at the front edge of the canopy. Lettering and logos may not be placed on sides, tops, or sloping surfaces of the awnings.
9. The applicant shall make the parking garage in the building available for use by the public after normal building hours, at prevailing market rates and subject to the needs of tenants in the building.
10. The design of the loading dock doors and interiors shall reflect the plans shown in Exhibit 44.
11. The exterior lighting of the building, other than first floor lighting for retail signage, shall be restricted to a low-level "wash" that will be less intense than lighting proposed for the Carnegie Library or the new Convention Center.
12. The applicant shall have the necessary flexibility to make adjustments to the project with respect to the location and design of all interior components, including partitions, slab configuration, doors, hallway columns, stairways, location of elevators, electrical and mechanical rooms, provided that the variations do not change materially the exterior configuration of the building or the ability of the applicant to meet the other provisions of this order.
13. The applicant shall enter into a Memorandum of Understanding with the D.C. Department of Human Rights and Local Business Development in order to achieve, at a minimum, the goal of 35 percent participation by small, local and disadvantaged businesses in connection with the construction and operation of the project to be created as a result of the PUD project.
14. The applicant shall enter into a First Source Employment Agreement with the Department of Employment Services (DOES) in order to achieve the goal of

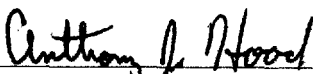
utilizing District of Columbia residents for at least 51 percent of the jobs created by the PUD project.


15. The change of zoning from C-3-C, DD/C-3-C and HR/C-3-C to C-4 for the subject property shall be effective upon the recordation of a covenant as required by 11 DCMR 2409.3, and discussed in paragraphs 16, 17 and 18 of this order. Pursuant to the intent of 11 DCMR 2407.3, no building permit shall be issued for this PUD modification until the applicant has recorded a "Notice of Modification" of Z.C. Order No. 629 in the Land Records of the District of Columbia. That Notice of Modification shall include a true copy of Z.C. Order Nos. 629, 629-A, 629-B, 629-C, 629-D, 629-E and 629-F and this Order that the Director of the Office of Zoning has so certified. The recordation of the Notice of Modification shall bind the applicant, and the successors in title to the property, to construct on and use this site in accordance with this order and any amendments thereof.
16. After recordation of the Notice of Modification, the applicant shall promptly file a certified copy of that Notice of Modification with the Office of Zoning for the records of the Zoning Commission.
17. The Office of Zoning shall not release the record of this case to the Zoning Regulations Division of the Department of Consumer and Regulatory Affairs (DCRA) until the applicant has filed a certified copy of the covenant with the records of the Zoning Commission.
18. The PUD modification approved by the Zoning Commission shall be valid until October 13, 2001, by which time an application must be filed for a building permit as specified in 11 DCMR 2409.1. Construction shall begin by October 13, 2002.
19. Pursuant to D.C. Code Section 1-2531 (1991), Section 267 of D.C. Law 2-38, the Human Rights Act of 1977, the applicant is required to comply fully with the provisions of D.C. Law 2-38, as amended, codified at D.C. Code, Title 1, Chapter 25 (1991), and this order is conditioned upon full compliance with those provisions. Nothing in this order shall be understood to require the Zoning Regulations Division of DCRA to approve permits if the applicant fails to comply with any provision of D.C. Law 2-38, as amended.

Vote of the Zoning Commission taken at its public meeting on March 13, 2000 by a vote of 5 – 0 (Kwasi Holman John G. Parsons, Herbert M. Franklin, Anthony J. Hood and Carol J. Mitten, to approve)

The Order was adopted by the Zoning Commission at its public meeting on April 10, 2000 by a vote of 5 – 0 (John G. Parsons, Carol J. Mitten, Kwasi Holman, Anthony J. Hood, and Herbert M. Franklin, to **APPROVE**).

In accordance with the provisions of 11 DCMR 3028, this Order shall become final and effective upon publication in the D.C. Register; that is, on APR 21 2000.


ANTHONY J. HOOD
Chairperson
Zoning Commission


JERRILY R. KRESS, FAIA
Director
Office of Zoning